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August 26, 2015

By ECF

Honorable Marilyn D. Go
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Pacheco, et al. v. City of New York, et al.,
1:14-cv-7581-RJD-MDG

Your Honor:

I am an Assistant Corporation Counsel in the office of Zachary W. Carter, Corporation Counsel of The City of New York, representing the defendants The City of New York, in this action. I write in response to plaintiffs' letters dated submitted August 21, 2015 regarding requests for certain discovery, and to request an additional three days to respond to plaintiffs' motion regarding the withheld audio recording.

By way of background, plaintiffs were arrested in connection with a fencing operation that occurred on November 21, 2014 in Staten Island where plaintiff Michael Pacheco, Jr. attempted to purchase a cell phone which he knew to be stolen. During their attempt to retrieve the phone, people in the store became agitated and the officers called for back-up. This store, at 1807 Forrest Avenue (not 1807 Richmond Avenue, as claimed in the complaint) is less than 1/10th a mile from the 121st Precinct. When officers called for back-up, individuals from several different units in the precinct responded, including the detective squad, patrol, and anti-crime. Defendants have been working diligently to provide the names of all the individuals who are pictured in the video, and will continue to do so. A court order to do so is simply unnecessary.

Plaintiffs also request that defendants turn over the disciplinary records for all of the named officers. Defendants have agreed to produce records from within ten years of the filing of this lawsuit, regarding substantiated and unsubstantiated allegations of false statements or allegations of a similar nature to those in the complaint, namely, false arrest and excessive force, against the individually named and properly served defendants. Defendants have already started providing those records for the two properly named and served defendants, and will be able to provide the underlying CCRB closing reports by the end of this week. These closing

reports include the names and addresses for the complainants in those cases, as requested by counsel in his letter. Defense counsel is endeavoring to obtain the relevant IAB files and will produce them on a rolling basis once they are in my possession.

Furthermore, defense counsel will provide disciplinary discovery under the same limitations for the seven additional officers who were named in July. However, while summonses have been issued for these defendants, there are no affidavits of service, nor has counsel received requests for representation. In fact, four summonses were issued on August 20, 2015 – the day plaintiffs’ motion was filed. Once they are properly served and have appeared in the case, counsel will provide their disciplinary records under the same conditions as those officers who have already appeared.

Plaintiffs request that the Court review the redacted documents *in camera* is premature, as the parties have not had an opportunity to meet and confer regarding the content of those redactions. However, should the parties be unable to come to an understanding, defendants would be open to an *in camera* review.

Finally, defense counsel respectfully requests a brief extension of time to Monday, August 31, 2015 to respond to plaintiffs’ letter regarding the audio tape. In order to properly respond, counsel needs the help of Sgt. Concepcion, who is returning from vacation later this week. This brief extension will allow defendants to fully brief the issue and will not cause any additional delay in the case.

Thank you for your consideration of this matter.

Respectfully submitted,

/s

Elissa B. Jacobs

cc: Michael Colihan
Attorney for Plaintiff

Bv ECF